



RECEIVED

-2-

APR 08 2002

COPY OF PAPERS  
ORIGINALLY FILED

GROUP 3600  
REMARKS

This Amendment is in response to the Office Action dated October 22, 2001 in which claims 57-61, 64-94, 96-129, 132-139, 142-145, 147-150, 164 and 166-168 were rejected. Applicants respectfully request reconsideration and allowance of all pending claims in view of the following remarks.

I. ALLOWABLE SUBJECT MATTER

In the Office Action, the Examiner indicated that claims 1-56 are allowed, claim 57 does not require either "non-parallel" or "restraint" limitations and claims 74, 82, 86, 91, 103, 110, 116, 120, 125, 132, 142, 143, and 147 do not require the "restraint" limitation.

II. IMPROPER RECAPTURE

The Examiner rejected claims 57-61, 64-94, 96-129, 132-139, 142-145, 147-150, 164, and 166-168 under 35 U.S.C. §251 as allegedly being an improper recapture of claimed subject matter surrendered in the application for the patent upon which the present reissue is based. The Examiner alleged that Applicants introduced the "restraint" limitation into the independent claims (page 9 of the amendment filed March 23, 1995) and indicated that the "case can be expedited by entering the requested amendment".

The Examiner references MPEP 1412.02 (Example B) as citing that even though there was no argument why this limitation was introduced, it must be presumed that the added "restraint" limitation was introduced to obviate the rejection". The Examiner concluded that "[t]herefore, the omitted limitation relates to subject matter previously surrendered by the applicant, and impermissible recapture exists."

Applicants respectfully submit that the Examiner's conclusions regarding impermissible recapture are not supported by the specific facts of the case.

The "grandparent" application for the present application was 07/913,227. Application 07/913,227 did not contain the "restraint" limitation in any of its claims when it was granted allowance on April 1, 1994. Application 07/913,227 was abandoned on July 1, 1994, for failure to pay the issue fee (the Notice of Abandonment was mailed August 19, 1994), having served as the parent to application 08/269,936, filed July 1, 1994.

Application 08/269,936 served as the parent application for the present application. Applicants submitted a preliminary amendment to application 08/269,936 on March 23, 1995 adding the "restraint" limitation. As stated at page 1 of that preliminary amendment, it was "Preliminary to the first official action on the merits" and there were no rejections against the application. The sole purpose for amending the claims was to clarify the claim language. The added language describes features of the invention as being released from "restraint" rather than "moved". The preliminary amendment added the "restraint" limitation at the same time it removed the "moving" limitation. Neither change was motivated by any outstanding rejection. At the time the rejection was made, the claims stood allowed. Thus, the amendment could not have been made to overcome a rejection as stated by the Examiner.

Applicants respectfully submit that it is inappropriate to view the March 23, 1995 amendment adding the "restraint" limitation as falling within the bound of MPEP 1412.02, example B. This amendment was drafted while no rejections were pending against the application. Consequently, the amendment did not surrender subject matter in order to obviate a rejection. Therefore, the "restraint" limitation cannot form a basis for impermissible recapture.

Applicants respectfully request that because no impermissible recapture exists for the "restraint" limitation,

claims 57-61, 64-94, 96-129, 132-139, 142-145, 147-150, 164 and 166-168 be allowed.

III. CONCLUSION

In view of the foregoing, Applicants respectfully request reconsideration and allowance of claims 57-61, 64-94, 96-129, 132-139, 142-145, 147-150, 164 and 166-168. Favorable action upon all claims is solicited.

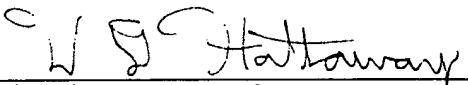
The Applicants were able to speak briefly with the Examiner on March 20, 2002. The Examiner explained schedule demands for the next several days. The Applicants will make another attempt to discuss aspects of this proceeding, in greater detail, the week of March 25, 2002.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By:

  
William D. Hathaway, Reg. No. 48,807  
Suite 1600 - International Centre  
900 Second Avenue South  
Minneapolis, Minnesota 55402-3319  
Phone: (612) 334-3222 Fax: (612) 334-3312

JRK:WDH:lah

**RECEIVED**

APR 08 2002

**GROUP 3600**